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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,790	11/12/2003	Azad Al-Najjar	Strom.7342	7715
55740	7590	11/17/2006	EXAMINER	
GAUTHIER & CONNORS, LLP 225 FRANKLIN STREET SUITE 2300 BOSTON, MA 02110			WILLSE, DAVID H	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,790

Applicant(s)

AL-NAJJAR, AZAD

Examiner

Dave Willse

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on May 3, 2004, is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11-12-03</u> . | 6) <input type="checkbox"/> Other: _____ |

Applicant's election of Species II in the reply filed on August 31, 2006, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by serial number and filing date is required (MPEP §§ 602.01 and 602.02). The oath or declaration is defective because there is a discrepancy in the filing date of PCT/SE02/00689 on page 2 (relative to that listed on page 1); also on page 2, item (e) rather than item (d) should be check marked.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The abstract of the disclosure is objected to because of the inclusion of legal phraseology involving "means" (line 3) and "said" (e.g., line 6), and on line 4, "compartment" should be replaced by --compartments--. Correction is required (MPEP § 608.01(b)).

The disclosure is objected to because of the following informalities: Figure 5 must be so labeled. On page 1, line 17 (as numbered by the Applicant), "raise" should read --rise--; on line 30, "prostheses" is misspelled; on line 31, "implantability" is misspelled. On page 2, line 27, "a", last occurrence, should be deleted; on line 31, "solvet hese" should be --solve these--; on line 36, "elastic" is misspelled. On page 3, line 30, "och" is not understood. On page 4, line 33, "heart" is misspelled. On page 5, line 3, "ventricles" is misspelled; on line 5, "in" should be replaced by --and--; on line 38, "atrioventricular" is misspelled; on line 40, "are", second occurrence, should be deleted. The spelling of "electro-magnets" (e.g., claim 3, line 3) and

Art Unit: 3738

“soft-ware” (e.g., claim 6, line 2) should be changed to the more common spellings in order to facilitate future text searches. *Numerous other errors were noted, and it is recommended that a substitute specification (accompanied by a statement that no new matter was included) be submitted in compliance with MPEP 608.01(q).* Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, it is unclear (when read in light of the specification) whether the “series of drawing and pressing means” (lines 1-2) are distinct from or overlap with the “number of drawing and/or pressing devices” (lines 4-5); on line 3, “whereby comprises” is vague and indefinite, and “two” should be replaced by --two--; on line 8, “the atriums” (plural) lacks a proper antecedent basis. In claim 2, line 1, “it” is vague; on line 2, “compartment” should be replaced by “compartments”. Other errors were noted.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


Claims 1-5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pol et al., FR 2 485 928: Derwent abstract; drawings. Figures 1 and 5 illustrate a series of drawing and pressing means **7a-7d**, **16a-16c**, etc.; two or four compartments; and a housing provided with rigid walls **4a**, **4b**, **14** or **14a**, **14b**, etc. Figure 3 shows plate-like magnets **21a** and **21b** provided with valve leaflet encapsulation and arranged to be able to be moved between the ventricles and the atrium by means of drawing and pressing devices **23a** and **23b**. Regarding claim 5, the pistons are viewed as portions of the outer wall and/or septa at least partially actuated by blood filling pressures.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pol et al., FR 2 485 928: Derwent abstract; drawings. Digital control of the artificial heart with power supplied by one or more DC batteries would have been immediately obvious, if not inherent, to the ordinary practitioner in order to provide independent control of the cardiac cycle consistent with the needs of the patient.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 5,676,162: abstract; drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762 and who is generally available Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Dave Willse
Primary Examiner
Art Unit 3738